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14 and OTTOMOTTO LLC

15 UNITED STATES DISTRICT COURT  
16 NORTHERN DISTRICT OF CALIFORNIA  
17 SAN FRANCISCO DIVISION  
18

19 WAYMO LLC,  
20 Plaintiff,  
21 v.  
22 UBER TECHNOLOGIES, INC.,  
OTTOMOTTO LLC; OTTO TRUCKING LLC,  
23 Defendant.  
24

Case No. 3:17-cv-00939-WHA

**DEFENDANTS UBER  
TECHNOLOGIES, INC. AND  
OTTOMOTTO, LLC'S REPLY IN  
SUPPORT OF ITS MOTION FOR  
RELIEF FROM AND  
EMERGENCY MOTION FOR  
STAY OF NON-DISPOSITIVE  
PRETRIAL ORDER OF  
MAGISTRATE JUDGE (DKT. 951)**

Trial Date: October 10, 2017

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26  
27 **REDACTED VERSION OF DOCUMENT SOUGHT TO BE SEALED**  
28

1 **I. INTRODUCTION**

2 Waymo's opposition is notable for what it does not dispute. Waymo does not dispute that  
 3 its Section 2019.210 disclosure controls the scope of discovery. Waymo has no rebuttal to the  
 4 authority that disclosure of broad categories and a "[REDACTED]  
 5 [REDACTED]" spreadsheet is insufficient to adequately disclose non-LiDAR trade secrets.  
 6 Waymo does not even attempt to defend the sufficiency of its disclosure. Waymo cannot dispute  
 7 that LiDAR-related trade secrets have been its primary focus throughout the case—including the  
 8 sole focus of the trade secret claims as phrased in the Complaint and in the preliminary injunction  
 9 phase—nor that the Court has directed Waymo to *narrow* its trade secret claims, not expand  
 10 them. Finally, as with its opposition in connection with the similar but separate briefing pending  
 11 before the Court, Waymo offers no counter to Uber's showing that the discovery it seeks renders  
 12 the October 10 trial date untenable. (*See* Dkt. 999-4 at 1:11-13.)

13 The July 19 Order was contrary to law because discovery must be limited to the scope of a  
 14 sufficiently particular disclosure pursuant to Section 2019.210. Waymo's opposition brief fails to  
 15 support Judge Corley's decision, as the non-LiDAR discovery requests are untethered to properly  
 16 specified trade secrets in Waymo's trade secret disclosure. The Court should grant Uber's  
 17 motion.

18 **II. ARGUMENT**

19 Waymo does not dispute that Cal. Civ. Proc. Code § 2019.210 requires a trade secret  
 20 plaintiff to identify trade secrets with specificity. (*Compare* Mot. for Relief at 2, Dkt. 1006-4  
 21 (citing *Comput. Econ., Inc. v. Gartner Grp., Inc.*, 50 F. Supp. 2d 980, 985 (S.D. Cal. 1999)), *with*  
 22 Opp'n at 4, Dkt. 1034-4.) Nor does it dispute that the scope of discovery is cabined by a proper  
 23 trade secrets disclosure. (*Compare* Mot. for Relief at 2, Dkt. 1006-4 (citing case law in N.D.  
 24 California courts stating that Cal. Civ. Proc. Code § 2019.210 frames the appropriate scope of  
 25 discovery), *with* Opp'n, Dkt. 1034-4.)

26 Waymo's argument that the case law is irrelevant because Uber has "never challenged"  
 27 the sufficiency of its disclosure is wrong on both the facts and the law. (Opp'n at 2, Dkt. 1034-4.)  
 28 Uber did, in fact, dispute the sufficiency of Waymo's Section 2019.210 trade secret disclosure

1 before Judge Corley. (Resp. to Waymo Ltr. Br. at 3, Dkt. 748-13.) And the trade secret  
 2 disclosure governs the appropriate scope of discovery in every trade secret case, so its sufficiency  
 3 is directly relevant to whether the Court should allow Waymo the unbridled discovery it seeks.  
 4 *See Gabriel Techs. Corp. v. Qualcomm Inc.*, No. 08CV1992 AJB (MDD), 2012 WL 849167, at  
 5 \*3 (S.D. Cal. Mar. 13, 2012) (affirming magistrate judge’s ruling that denied plaintiff’s motion to  
 6 compel discovery where description of trade secret was not “adequately articulated to meet the  
 7 sufficient particularity standard”). The case law that Waymo ignores demonstrates the clear error  
 8 in the July 19 Order: the Order allows inappropriate expansion of discovery that is not cabined to  
 9 the proper scope of a sufficient Section 2019.210 trade secret disclosure.

10 Waymo recites only three entries in its trade secret disclosure as pertaining to non-LiDAR  
 11 trade secrets, but does nothing to show how those entries meet the Section 2019.210 standard. As  
 12 explained in *Loop AI Labs Inc. v. Gatti*, “categorical descriptions render it impossible for  
 13 Defendants to conduct public domain or other research to challenge the alleged secrecy of the  
 14 information at issue.” 195 F. Supp. 3d 1107, 1115-16 (N.D. Cal. 2016). Here, Waymo identified  
 15 broad categories of “ [REDACTED]  
 16 [REDACTED] ” (item 108) and “ [REDACTED]  
 17 [REDACTED] ” (item 109). The impropriety of these vague, catch-all descriptions is  
 18 compounded by the fact that they purport to be for [REDACTED]  
 19 [REDACTED], which is far from “enough detail so  
 20 that the defendant is able to learn the boundaries of the alleged trade secret in order to investigate  
 21 defenses.” *VasoNova Inc. v. Grunwald*, No. C 12-02422 WHA, 2012 WL 4119970, at \*2 (N.D.  
 22 Cal. Sept. 18, 2012); *see also Perlan Therapeutics, Inc. v. Super. Ct.*, 178 Cal. App. 4th 1333,  
 23 1346 (2009) (in affirming trial court’s finding that trade secret disclosure was insufficiently  
 24 specific, noting that “where the alleged trade secrets consist of incremental variations on, or  
 25 advances in the state of the art in a highly specialized technical field, a more exacting level of  
 26 particularity may be required”) (internal citations omitted).

27 Waymo similarly makes no attempt to defend its citation to its asserted trade secret 85,  
 28 which is based on an excel spreadsheet that sets out “ [REDACTED] ”

Waymo asserts without support that the spreadsheet “ [REDACTED] ” but as Uber has separately shown, Waymo’s references to this spreadsheet have been a moving target and remain insufficient. (Dkt. 999-4 at 2-3.) Waymo does not deny that the trade disclosure provides no explanation of what language in the spreadsheet constitutes trade secret information; instead, it refers broadly to the spreadsheet and claims that it contains “ [REDACTED] ” including but not limited to “ [REDACTED] ” Such a vague disclosure cannot justify expanding discovery at this stage of the case.

Waymo does not dispute that both allegations of trade secret misappropriation in the Complaint explicitly relate to LiDAR technology. (E.g., Dkt. 23 ¶ 71 (“Waymo has at all times maintained stringent security measures to preserve the secrecy of its LiDAR trade secrets”), ¶ 80 (“Waymo’s technical information, designs, and other ‘know how’ related to its LiDAR system constitute trade secrets”).) It instead cites background and introductory language, but those sections a) do not overcome the language in the trade secret claims themselves, and b) in any event, serve to further underscore Waymo’s focus on LiDAR technology: “Mr. Levandowski’s download included 9.7 GBs of sensitive, secret, and valuable internal Waymo information. 2 GBs of the download related to **Waymo’s LiDAR technology**. Among the downloaded documents were confidential specifications for each version of every generation of **Waymo’s LiDAR circuit boards**.” (*Id.* ¶ 44 (emphasis added), ¶ 48 (“After downloading all of this confidential information regarding **Waymo’s LiDAR systems** and other technology . . . .”) (emphasis added).)

Waymo’s argument that its preliminary injunction motion does not bind it misses the point: the trade secret claims in the Complaint refer solely to LiDAR trade secrets; Waymo’s preliminary injunction motion referred solely to LiDAR trade secrets; the vast majority of Waymo’s 121-item trade secret disclosure addressed LiDAR trade secrets (with the possible exception of the few lines discussed above that do not meet Section 2019.210 muster); and discovery has focused on LiDAR trade secrets. Waymo’s reference to the total amount of information it alleges Mr. Levandowski downloaded similarly misses the point, as it does not specify what portion of that total volume constitutes asserted trade secrets—and it does not and

1 cannot point to any files that made their way to Uber. Now, having utterly failed to find anything  
 2 to support its LiDAR trade secret claims against Uber, Waymo is attempting to rummage around  
 3 to change course and shift the focus of its discovery.

4 Waymo's attempts to blame Uber for its lack of evidence and references to questions it  
 5 intends to ask cannot justify expanding the scope of discovery either. A trade secret plaintiff  
 6 bears the burden of an appropriately specific trade secret disclosure, and cannot disclose vague  
 7 categories in the hopes of gaining discovery to support them. *See Perlan Therapeutics*, 178 Cal.  
 8 App. 4th at 1344, 1350 (rejecting plaintiff's trade secret disclosure where plaintiff sought to  
 9 conduct discovery "with an eye toward enhancing [its] understanding of the trade secrets already  
 10 asserted and adding additional particular trade secret claims as discovery potentially uncovers  
 11 further instances"). Waymo also does not dispute that it makes this claim after *extensive*  
 12 discovery and inspections of facilities, source code, technical documents, and computers. (*See*  
 13 Mot. for Relief at 1, Dkt. 1006-4.) It cites no authority for the suggestion that questions a party  
 14 intends to ask can justify expanding the scope of discovery from what was pled in the Complaint  
 15 and its mandated trade secret disclosure.<sup>1</sup>

16 Finally, Waymo apparently concedes that expanding the scope of discovery to non-  
 17 LiDAR trade secrets would interfere with the Court's schedule, as it does not even mention this  
 18 issue in its reply. (*Compare* Mot. for Relief at 4, Dkt. 1006-4 (noting need for parties to finalize  
 19 fact discovery and move to expert discovery and trial preparation in order to keep October trial  
 20 date), *with* Opp'n, Dkt. 1034-4.)

### 21 **III. CONCLUSION**

22 The July 19 Order was contrary to law because discovery must be limited to the scope of a  
 23 sufficiently particular disclosure per Section 2019.210. Waymo is unable to support Judge  
 24 Corley's decision, as it cannot defend the sufficiency of its disclosures under the relevant  
 25 California authority. Nor can Waymo deny that it is attempting to expand the case beyond the

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 27 <sup>1</sup> Waymo's cited list of questions (Opp'n at 3 n.1, Dkt. 1034-4) also omits that the first  
 28 question it cites to purportedly show non-LiDAR questions (referring to "systems to collect data")  
 falls under the heading "Google/Waymo LiDAR Development Efforts" and that the fuller  
 quotation refers to "systems to collect data **from its LiDAR technology.**"

1 focus of the Complaint, particularly the explicit language of the trade secret claims. There is no  
2 basis to allow Waymo to expand its discovery now. Judge Corley's order expanding discovery to  
3 non-LiDAR information should be reversed.

4 Dated: July 28, 2017

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6  
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